

RONALD C. MARTIN,	:	Order Docketing and Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 01-8-A
ACTING EASTERN OKLAHOMA	:	
REGIONAL DIRECTOR, BUREAU	:	
OF INDIAN AFFAIRS,	:	
Appellee	:	March 19, 2001

Appellant Ronald C. Martin seeks review of a decision denying him a Certificate of Degree of Indian Blood (CDIB) card. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal.

Appellant stated in his notice of appeal that he was “appealing [his] application for citizenship into the Choctaw Nation.” However, he did not identify any Bureau of Indian Affairs (BIA) decision from which he was appealing. Nor did he show that he had served his notice of appeal on interested parties. In an order dated October 10, 2000, the Board required Appellant to identify the decision from which he was appealing and to serve interested parties. The order informed Appellant that failure to comply would result in dismissal of this appeal for failure to prosecute.

Within the time given for a response, Appellant filed additional materials with the Board. However, he did not identify the decision from which he was appealing and did not indicate that he had served interested parties with either his notice of appeal or the additional materials.

On October 25, 2000, the Eastern Oklahoma Regional Office, BIA, transmitted to the Board a copy of an October 18, 2000, decision signed by the Acting Regional Director. This decision denied Appellant’s request for a CDIB card.

Technically, the Board acquired jurisdiction over this appeal on September 28, 2000, the date of postmark of Appellant’s notice of appeal. As the Board stated in Burlington Northern Railroad Co. v. Acting Billings Area Director, 31 IBIA 180, 180-81 (1997):

The Board has consistently held that once an appeal has been filed with it, BIA loses jurisdiction over the matter except to participate as a party in the appeal. The reasons for this rule were extensively discussed in Five Sandoval Indian Pueblos, Inc. v. Deputy Commissioner of Indian Affairs, 21 IBIA 17, 18-19 (1991), and will not be repeated here, except to comment that the rule is part of any orderly review process and is intended to ensure that only one forum at a time has authority to act in a matter. See Medallion Exploration v. Acting Phoenix Area Director, 28 IBIA 276, 277 (1995), and cases cited therein. In Hammerberg v. Acting Portland Area Director, 24 IBIA 78, 79 (1993), the Board held that “[a]ny decision issued by BIA in a matter pending before the Board without express authorization from the Board is a nullity and is without any force or effect.”

Given Appellant’s failure to serve parties, it appears likely that the Regional Director was not aware that an appeal had been filed with the Board when he issued his October 18, 2000, decision. See Pierre Indian Learning Center v. Aberdeen Area Director, 33 IBIA 90, n.1 (1998). However, whether or not the Regional Director was aware of the pendency of this appeal, the Board finds that no purpose would be served by further delaying final Departmental resolution of this case by remanding the matter to the Regional Director for additional proceedings. It therefore considers that this appeal was taken from the Regional Director’s October 18, 2000, decision. It further accepts the Regional Director’s filing of a copy of that decision as fulfillment of the requirement that Appellant identify the decision from which he was appealing.

Even giving Appellant the benefit of this special consideration, this appeal must still be dismissed.

Appellant has failed to show that he served copies of his notice of appeal and supporting documentation on interested parties. As stated in the Board’s October 10, 2000, order, this appeal is therefore subject to dismissal for failure to prosecute.

Alternatively, even if the Board were to overlook Appellant’s failure to serve interested parties, the appeal must be dismissed for lack of jurisdiction. The materials before the Board show that Appellant’s request for a CDIB card was reviewed by the Choctaw Nation of Oklahoma, the tribe from which Appellant claimed descendency. The Nation determined that Appellant was not eligible for a CDIB card. The Superintendent, Talihina Field Office, BIA, concurred and notified Appellant that his request was denied by letter dated August 16, 1999.

Appellant appealed this decision to the Regional Director. The Regional Director’s October 18, 2000, decision affirmed the denial of a CDIB card. The decision stated: “This decision is based upon the exercise of authority delegated to me by the Secretary of the Interior and is final for the Department.” Oct. 18, 2000, Letter at 2.

The issuance of CDIB cards is governed by 25 C.F.R. Part 62. Section 62.4 provides: “A person who is the subject of an adverse enrollment action may file or have filed on his/her behalf an appeal. An adverse enrollment action is: * * * (6) The certification of degree of Indian blood by a Bureau official which affects an individual.”

25 C.F.R. § 62.10(a) provides that when, as here, a Superintendent has taken an adverse enrollment action, the appeal is to the Regional Director. The subsection states: “The [Regional] Director shall make a decision on the appeal which shall be final for the Department [of the Interior] and shall so state in the decision.” See Stogsdill v. Southern Plains Regional Director, 35 IBIA 157 (2000); Harrison v. Acting Director, Office of Tribal Services, 32 IBIA 49 (1998); Jackson v. Muskogee Area Director, 32 IBIA 45 (1998); McClure v. Acting Muskogee Area Director, 27 IBIA 154 (1995). The Regional Director clearly stated that his decision was final for the Department.

As further noted in the decisions cited above, nothing in 25 C.F.R. Part 62 provides a role for the Board in deciding appeals from adverse enrollment actions.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed but dismissed for failure to prosecute. Alternatively, it is dismissed for lack of jurisdiction.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge